

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition of the)
Community Broadcasters Association) RM-9260
For Establishment of a "Class A")
Television Service)

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To: The Commission - Mail Stop 1170

COMMENTS OF IBL, LLC

IBL, LLC, operator of low power television station W53AV, Indianapolis, Indiana, file these comments.

IBL, LLC (hereafter referred to as "IBL") licensee of Low Power Television Station W53AV Indianapolis Indiana (hereafter referred to as "WAV"), strongly supports the Proposed Petition for Rulemaking File Number RM-9260 to Establish a Class A Television Station Service proposed by the Community Broadcasters Association (hereafter referred to as "CBA").

The Commission in 1987 authorized a low power television station on Channel 53 in Indianapolis. IBL acquired the CP for WAV in 1993 and it began operation October 31, 1993.

IBL is a partnership of William G. Mays, an African-American resident of Indianapolis and William S. Poorman, a White resident of Indianapolis (Zionsville), Indiana. Mays owns 51% of IBL, Poorman 49%. The State of Indiana, the City of Indianapolis/Marion County and the Federal Government have certified IBL as a Minority Owned Business Enterprise.

Upon acquiring and putting WAV on the air, it was the desire of Mays and Poorman to create a television station that not only provided entertainment programming to the citizens of

Indianapolis and Marion County, Indiana, but also to provide local information, public affairs, educational, religious and entertainment programming for undeserved populations.

CBA's Petition would provide WAV and stations like ours with a sense of security.

CBA's Petition would provide WAV the security that the local programming we provide (currently some 35½ hours weekly) will continue.

CBA's Petition would provide WAV the security that the 11½ hours of minority-oriented information and religious programming we air weekly would continue to serve Indianapolis' minority communities.

CBA's Petition would provide WAV the security that the 108,000 persons who regularly watch WAV's programming wouldn't lose their unique local service.

CBA's Petition would provide WAV the security of bridging the Digital Divide (to quote the words of Commission Chairman William Kennard in his May 16th speech to the NAACP Board). Under current FCC Regulations, based on the Commission's DTV policy, WAV is scheduled to shut down sometime between the year 2000 and 2006. While WAV will be filing for Displacement Relief on June 1st, there currently is no guarantee that WAV and the local programming we provide will continue into the 21st Century.

CBA's Petition would give WAV, our viewers and the citizens of Indianapolis security and certainty that the service we provide would continue.

CBA's Petition's proposal for increased power provides WAV the security to allow our signal to be clearer and easier to receive for the 40% of Indianapolis residents who choose not to have cable.

For these and other reasons we will outline below, WAV urges the Commission to adopt CBA's Petition.

WHAT LOW POWER TELEVISION STATIONS FACE DAILY

Through the Rule Making process, the Commission regularly hears about the operation, progress, and "real world" problems and solutions faced by broadcasters. In our Comments, IBL wishes to inform the Commission (and the many interested parties who read these Comments) about what WAV accomplishes in its local community/market; the role our station plays in that community/market; the obstacles we've had to overcome to serve our community/market and how CBA's Petition would allow us to increase and expand local programming service we provide.

CBA's Petition to create a Class A Television Service would grant Class A status to low power stations providing a minimum of three hours of weekly programming "produced within the protected service area of the station".

WAV met the criteria proposed for a Class A television station since our first day on the air and today we far exceed CBA's proposed minimum. Over the past 18 months, the total amount of locally produced weekly programming on WAV has grown from 21 hours weekly to our current level of nearly 36 hours weekly.

WAV's ownership decreed from the beginning that local programming, either produced by station personnel, or by local producers and entrepreneurs, was going to be an important part of WAV's programming mix.

Indianapolis is the 25th TV market (Nielsen DMA), and the 12th Largest City in America. A Consolidated City with co-terminus boundaries with Marion County, Indiana; Indianapolis currently has a population of 817,525 (July, 1996 US Census Bureau Estimate). There are

335,500 Households in Indianapolis/Marion County (Nielsen Data 1997). WAV's signal reaches every household (either through cable or over the air) in the City of Indianapolis/Marion County.

Indianapolis is the nation's 29th Largest African-American Metro Area and Indianapolis' African-American city population is 16th Largest in America. African-Americans are the city/county's largest minority group. The Census Bureau currently estimates African-American population at 188,030 or 23.0% of the total population (July, 1996 US Census Bureau Estimate). Hispanics comprise 11,297 or 1.4% of the city's population, Asians 10,212 or 1.3% (July, 1996 Census estimate).

WAV's 0.1 m/v contour encompasses all of Indianapolis/Marion County, and our "fringe" signal covers half the nine county Indianapolis MSA.

As a minority-owned licensee, IBL felt it crucial to provide television programming that met the informational, educational, entertainment and social needs of Indianapolis' minority community. When WAV signed on in 1993, Indianapolis' full power television stations had drastically reduced the amount and nature of locally produced information and public affairs programming directed to Indianapolis minorities. During the 1960's, 70's and 80's, each Indianapolis network affiliate and the PBS outlet had at least one half hour locally produced program targeting minorities. When WAV debuted, only two other TV stations aired such programming. Today, none do.

We're not sure the Commission understands the hurdles, roadblocks and obstacles low power television stations, especially minority-owned stations, face daily.

Even though viewers and advertisers regard us as equal to full power TV stations in the market, the Commission, industry trade associations, program syndicators, the Nielsen Ratings

service and even the Federal National Telecommunications and Information Agency (hereafter referred to as "NTIA") regard low power stations as second class broadcast citizens.

IBL is minority-owned (Black) and has been certified as such. However, neither WAV nor any other minority-owned low power television station is included in the "official census" of minority owned television stations compiled by NTIA.

Even though including minority-owned low power television licensees would dramatically increase the number of minority owned television stations (and minority owned broadcasters) in America, NTIA refuses to include low power stations, even those like WAV that provides substantial local programming.

Creating a Class A television service, would in our view, encourage NTIA to include minority owned Class A stations in their census of minority owned stations. This would dramatically INCREASE the numbers of Black, Hispanic and other minority owned TV stations in America.

Minority owned low power stations are providing needed local service to African-American, Hispanic, Asian and Native American communities across this country. Yet, the Clinton Administration, the Commission and the television industry won't even acknowledge we exist.

In spite of the fact we've yet to turn a profit, WAV is one of the more successful low power stations in the country. IBL's two partners have personally invested some \$500,000 of their own resources into WAV since it's creation.

Yet, the uncertain nature of LPTV's makes the value of IBL partners' investment tenuous. CBA's Petition would place some certainty on WAV (and other similarly situated stations). That certainty would provide, at some point, the ability of IBL to realize the fruits of their investment

and enable our station to further expand staff and quality of programming and service we provide the Indianapolis community.

IBL also is licensee of two Radio Stations, WGGR (FM) and WIRE (FM), in the Indianapolis Market. A second company, Shirk, Inc, owned by Poorman and Mays is licensee of WHHH (FM), Indianapolis. The profits from these radio stations have helped to keep WAV and its local programming commitment afloat. Without those synergies, WAV alone would have floundered and succumbed after one year.

WAV ranks among the Top 20 LPTV's in audience size in America. Though for the past three years we have met Nielsen's requirements to be included in their ratings books, Nielsen's outmoded computer technology continues to exclude WAV from its ratings reports. Nielsen's outmoded technology limits ratings reports to only the top 25 TV stations or cable networks in a given DMA. In Indianapolis WAV ranks 29th.

Some 107,900 people regularly watch WAV's programming (Nielsen metered data February 1998). One in eight persons in the City of Indianapolis regularly watch WAV during any given week (Nielsen February, 1998).

Because current Commission policy and Federal law prohibits LPTV's like WAV from obtaining cable must carry, WAV had to fight to obtain voluntary cable carriage by the two cable systems serving Indianapolis (Time Warner and Comcast). That carriage is tenuous. Both cable operators carry our station because WAV provides them the opportunity to meet local franchise requirements for locally produced community interest programming. Yet, changes in corporate ownership or orientation could cause WAV's cable carriage to be restricted or ended.

And in the transition to the digital age, if the Commission requires must carry for DTV signals, and if the Commission doesn't allow must carry for Class A LPTV's like ours, then with

the stroke of a pen 60% of WAV's audience (and 60% of our potential viewers) would be denied the opportunity to view our local programming; much of which is not available on other local stations.

WHY THERE SHOULD BE CLASS A TV STATION STATUS

IBL wishes to directly address petitioners and respondents who feel that low power broadcasters should not qualify for Class A Status.

The National Association of Broadcasters and the major television ownership groups constantly tell the Commission that television broadcasters continually and voluntarily provide copious quantities of local programming meeting the needs and interests of their community.

So, do many low power stations, stations that would qualify for Class A Status under CBA's Petition. Why then does the NAB and major industry trade organizations want to deny our stations the same security their member stations receive for providing the same thing – local programming meeting local needs?

The original rationale behind the Commission's creation of the low power TV service was to provide additional local service to local communities.

The Commission wished to provide additional opportunities for minorities and women to own television stations.

The Commission wished to provide for new, lower cost opportunities for persons to enter television and for producers to have additional access to television outlets for their programming.

The Commission wished to provide diversity of programming, particularly to increase programming for racial minorities and to small population niches and smaller geographic areas within a DMA.

WAV and scores of other low power television stations, in rural, suburban areas and America's largest cities are meeting the Commission's dreams and desires everyday.

WAV and scores of other low power television stations are doing what NAB member TV stations do everyday - meet the needs of their communities with local programming.

WAV and scores of other low power television stations are doing EXACTLY what the NAB and its member stations do daily - serve their local communities with a diversity of local programming.

Why, then does the NAB oppose CBA's Petition?

Why does the NAB and the television industry not want to allow WAV and other LPTV's the opportunities to compete on a level playing field in our local communities?

WAV'S CURRENT ONGOING LOCAL PROGRAMMING COMMITMENT

From WAV's first day of operation, locally produced programming has been our cornerstone. Currently, WAV broadcasts 32 different locally produced programs comprising a total of 35½ hours weekly. Eleven (11) of those programs are produced in-house by WAV. Twenty-one (21) programs are produced in Indianapolis and brought to WAV by outside producers.

These programs are scheduled during Daytime, Early Afternoon, Early Fringe and Prime Time Dayparts, seven days a week. None are scheduled overnights.

Putting WAV's local programming commitment in context; here's how much locally produced programming is aired by the major Indianapolis television affiliates (includes their local news programming). The week analyzed began Sunday May 3rd and ending Saturday, May 10th.

WTTV (Sinclair - Licensee / WB) - 5.5 Hours Local Programming

WRTV (McGraw Hill - Licensee / ABC) - 35.3 Hours Local Programming

WISH (LIN Broadcasting - Licensee / CBS) - 41.3 Hours Local Programming

WTHR (Dispatch Broadcasting - Licensee / NBC) - 35.8 Hours Local Programming

WXIN (Tribune Broadcasting - Licensee / FOX) - 4.6 Hours Local Programming

WNDY (Paramount - Licensee / UPN) - 5 Hours Local Programming

WFYI (Metropolitan Indianapolis - Licensee / PBS) - 10 Hours Local Programming

WAV, the television station with the least power and lowest gross revenues in the market, nevertheless produces and brings viewers the third largest amount of locally produced programming in the market; the most diverse amount of programming; and the most provided by outside local producers than any Indianapolis TV station.

The 35½ hours a week of local programming WAV airs doesn't include special programming that meets specific community needs and interests or broadcasts of local sporting events.

During our five years of operation, WAV has broadcast University of Indianapolis football and baseball games and an annual high school all-star game involving students from Indianapolis area high schools. We've broadcast games of the Indiana Blast outdoor soccer team. Keeping with Indianapolis auto racing heritage, WAV broadcasts three locally produced programs on the local motor racing events and activities.

For Indianapolis' African-American community, WAV has produced an ambitious series of live, local programs.

In our first year, WAV produced and broadcast the Coca Circle City Classic, an annual football game between two historically Black colleges played in the RCA Dome. Since 1996, WAV has produced and aired the Circle City Classic Parade, the nation's second largest African-American oriented parade (after Chicago's Bud Billiken Parade).

In 1996 and 1997, our station broadcast live Indianapolis' official Dr. Martin Luther King, Jr. Birthday Celebration. An annual worship and memorial celebration featuring nationally known speakers, along with Indiana Governors Evan Bayh and Frank O'Bannon, Indianapolis Mayor Stephen Goldsmith and Congresspersons Andy Jacobs and Julia Carson and other notables.

On Dr. King's Birthday this year, WAV produced and broadcast a 12-hour live special on Dr. King's life and impact on the Indianapolis community. Interviews with citizens who worked with Dr. King, films on his life and interviews with viewers and community leaders were part of this unprecedented Indianapolis TV event.

Indianapolis and Indiana are home to the nation's largest Black Expo. The Indiana Black Expo utilizes the entire Indiana Convention Center plus the RCA Dome, attracting national celebrities and speakers and some 200,000 to downtown Indianapolis for a four-day event. Since 1994, WAV has produced and broadcast programming from Indiana Black Expo. Since 1995 our Black Expo programming has been broadcast live (some 36 hours the past three years).

WAV spotlights trends in the Indianapolis arts community through our five-year-old program *Localville*, which weekly showcases local musicians and bands in the city's growing music scene. Our *Six Thirty PM* magazine regularly spotlights productions by Indianapolis area arts organizations including the Indiana Repertory Theater, Beef & Board Dinner, Civic Theater, Phoenix Theater, Madame C.J. Walker Theater and American Cabaret Theater.

Indianapolis civic leader and arts booster P.E. McAllister hosts an hour long look at the positive offerings of Indianapolis arts, cultural and educational institutions.

WAV has the city's only television programs devoted to local, small and minority owned businesses. The five-year-old *Small Business Forum* features interviews with African-American and other minority business owners and entrepreneurs; along with experts sharing information to help budding business owners.

Earlier this year, WAV began airing *Small Business Development*, produced by the Indiana Small Business development Center, brings the resources of state government to viewers and potential entrepreneurs to increase minority and women owned business opportunities.

Diversity in religious programming is another programming service of WAV. We air no nationally syndicated religious programming or ministries, concentrating on local churches and religious organizations. WAV broadcasts the weekly Mass produced by the Indianapolis Catholic Archdiocese; a program produced by Indianapolis Islamic community, and broadcasts of Methodist, Baptist and Apostolic denominations.

Indianapolis elected officials, Federal, state and local appreciate the local programming access WAV provides. Our signature public affairs programs provides ample opportunities for elected officials to communicate directly with their constituents.

WAV provides more local airtime to local politicians and local candidates than other TV stations. As a low power station, we have the freedom to provide candidates with ample time, not "sound bites" for viewers to hear a candidate's message.

For the past three election cycles our signature programs *Six Thirty PM*, *the Recorder On Air Report* and *The Amos Brown Show* all have provided unfettered access to candidates of all parties, to get their messages out to the public. Each of these programs are broadcast at times

when people can view and candidates and elected officials have been appreciative of the unique access WAV provides.

WAV's *Six Thirty PM* was the only TV station to give members of the Indianapolis City-County Council a chance to talk live to their constituents

During the 1996 and 1998 elections, *Six Thirty PM* and a new program *The Amos Brown Show* provided interview opportunities to all candidates on the ballot for the 10th Congressional District (the Congressional district located in WAV's coverage area), including Libertarian and write in candidates.

In the 1998 election cycle, WAV's *The Amos Brown Show* also provided (and will continue to provide) interview access in key Federal, State and Local races.

Most television stations ignore elected school board races in their city of license. LPTV's like WAV don't. These local contests are important to our viewers. In the 1998 Indianapolis School Board elections, WAV provided each candidate (15) on the ballot with two in-depth live interviews, with viewer calls, that allowed candidates to talk about the issues important to them and viewers.

Among the elected officials who have regularly appeared (at length) on WAV's signature public affairs programming:

FEDERAL ELECTED OFFICIALS

US Senators Richard Lugar and Dan Coats

Congresspersons Dan Burton, Andy Jacobs, Julia Carson

STATE ELECTED OFFICIALS

Governor Evan Bayh

Governor Frank O'Bannon

Lt. Governor Joseph Kernan

Secretary of State Sue Ann Gilroy

State Treasurer Joyce Brinkman

Attorney General Pam Carter

Attorney General Jeffrey Modisett

Supt. of Public Instruction Suellen Reed

State Senators Glenn Howard, Billie Breaux, Thesesa Lubbers, Cleo Washington

House Speaker John Gregg, House Minority Leader Paul Mannweiler,

State Representatives Bill Crawford, Gregory Porter, Mike Young, Mae Dickenson, John Day, Vanessa Summers,

LOCAL ELECTED OFFICIALS

Mayor Stephen Goldsmith

Marion County Clerk Sarah Taylor

Marion County Sheriff Jack Cottey

Marion County Prosecutor Scott Newman

Marion County Treasurer Gregory Jordan

Marion County Treasurer Mary Buckler

City-County Councilors Carlton Curry, Marilyn Mooreres, Monroe Gray, Roselle Boyd, Elwood Black, Toby McClamroch, Beulah Coughenour, Jeff Golc, Mary Moriarty-Adams, Susan Williams, Frank Short, Dr. Phillip Borst, Ron Franklin, Phillip Hinkle, Cory O'Dell, Curtis Coonrod and Bob Cockrum.

Center Township Trustee Carl Drummer

THE CASE FOR ACCEPTANCE OF CBA'S PETITION

Since October 31, 1993 when WAV signed on the air it has been:

Handicapped by low revenues, a small staff, and shoestring overhead;

Handicapped by cable carriage that could be revoked at anytime;

Handicapped by current Commission policies that regard our service as "secondary";

Handicapped by being a minority-owned television station not recognized as such by the Federal Government;

Handicapped that under the transition to DTV we could be forced off the air any time in the next three years;

In spite of these handicaps, IBL and our WAV have built a sterling record of service to the people and viewers of Indianapolis.

IBL feels we've demonstrated the promise of the Low Power Television Service as envisioned by the Commission and the Congress.

Isn't the diversity of programming WAV offers Indianapolis everyday what the Commission wanted when they authorized the low power television service?

Isn't the surfeit of locally produced programming WAV offers Indianapolis; programming serving diverse community needs NOT served by other television stations, what the Commission wanted when they authorized the low power television service?

The NAB and other critics of the CBA's Petition would want the Commission to ignore what is actually being delivered in the local marketplace by low power television stations. The programming we've documented on our station is being replicated in other markets across America by low power television stations like WAV.

Low power television stations that are serving their communities don't receive coverage in *Broadcasting*, *Electronic Media*, *Communications Daily*, or the other industry trade publications the Commission and Commission staffers depend on for their knowledge of the daily workings of the broadcast industry.

You won't read about our stations on the Internet because most LPTV broadcasters receive scant coverage in their hometown daily newspapers; very few of us even get our programs listed in the daily and weekly newspaper TV listings.

Yet in spite of that, low power stations like WAV are covering local issues, serving minority audiences/communities, providing exposure to local artists, artisans and musicians, exposing diverse viewpoints, covering local sports at the high school, collegiate and farm team level. What WAV does everyday is what the Commission wishes television licensees - full power or low power - would do in their local communities' everyday.


Full-power television stations receive certain protections and must adhere to certain responsibilities. WAV and LPTV's like us ask simply that we receive those same protections and adhere to the same responsibilities.

We beseech the Commission to grant us some measure of stability so that we might increase our local service to our community.

We urge the Commission to Adopt CBA's Petition for Rulemaking RM-9260 and create a Class A Television Service.

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Respectfully Submitted,

A handwritten signature in black ink, consisting of several overlapping loops and a final horizontal stroke, positioned above a solid horizontal line.

Amos C. Brown III
On Behalf of IBL, LLC